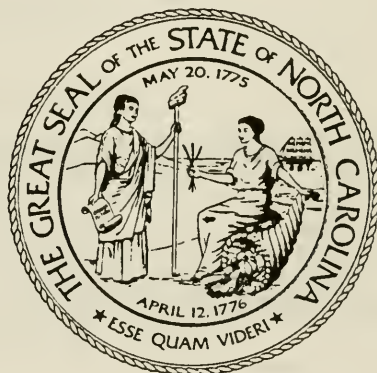


LEGISLATIVE
RESEARCH COMMISSION

NEED FOR STATE
DEPARTMENT OF HOUSING
AND HOUSING DISCRIMINATION



REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1989 SESSION

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
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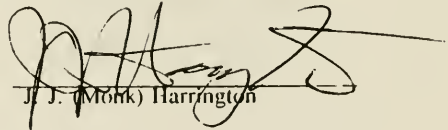
December 14, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Housing. The report was prepared by the Legislative Research Commission's Committee on Housing and Housing Discrimination pursuant to Section 2.1 of Chapter 873 of the 1987 Session Laws.

Respectfully submitted,


Liston B. Ranney


J. J. (Mork) Harrington

Cochairmen
Legislative Research Commission

1987-1988

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

Speaker of the House of
Representatives
Liston B. Ramsey, Cochair

Rep. John T. Church

Rep. Bruce Ethridge

Rep. Aaron Fussell

Rep. Vernon James

Rep. Josephus Mavretic

President Pro Tempore of
the Senate
J. J. Harrington, Cochair

Senator Henson P. Barnes

Senator A. D. Guy

Senator R. L. Martin

Senator James Richardson

Senator Lura Tally

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of Housing was authorized by Section 2.1(21)and(29) of Chapter 873 of the 1987 Session Laws (1987 Session). That act states that the Commission may consider House Joint Resolution 1303 and House Bill 1965 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 873, House Joint Resolution 1303 and House Bill 1965 are included in Appendix A. The Legislative Research Commission grouped this study in its Buildings and Disadvantaged Businesses area under the direction of Representative John T. Church. The Committee was chaired by Senator William D. Goldston, Jr. and Representative Anne C. Barnes. The full membership of the Committee is listed in Appendix B of this report. A committee

notebook containing the committee minutes and all information presented to the Committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Study Committee on Housing and Housing Discrimination had its first meeting on December 3, 1987. The purpose of the meeting was to give background information to the Committee members on existing State housing efforts, including types of programs, funding, and the agencies with responsibility in the housing area. Committee Counsel reviewed House Bill 1965 and House Joint Resolution 1303, the legislation proposing the study. Counsel also explained Senate Bill 738 (Chapter 841 of the Session Laws) which created the North Carolina Housing Trust Fund and the North Carolina Housing Partnership to oversee the Fund. Counsel then reviewed a chart listing the thirteen State agencies and departments with housing functions and the responsibilities of each.

S. Thomas Rhodes, Secretary of the Department of Natural Resources and Community Development, spoke on housing needs in North Carolina and the role of NR&CD in meeting those needs and on cutbacks in federal spending on housing. Mr. A. Robert Kucab, Executive Director of the North Carolina Housing Finance Agency, gave the Committee an overview of the activities of the Agency.

At its second meeting, on January 6, 1988, the Committee turned its attention to the issue of housing discrimination. Mr. Donald Saunders, North Carolina Legal Services, spoke on the problem of sexual harassment of women tenants, especially lower income women, by their landlords or property managers and maintenance people. Mr. Saunders suggested that Chapter 41A of the General Statutes, the Fair Housing Act, be amended to clearly spell out that this type of conduct is discriminatory. Ms. Lockhart Follin-Mace, of the Governor's Advocacy Council on

Persons with Disabilities, spoke to the Committee on the work of the Council and requested the Committee to consider adding handicapped persons to the classes protected by the Fair Housing Act (Chapter 41A).

Mr. Jim Stowe, Director of the North Carolina Human Relations Council, and Mr. Daniel Addison, legal representative for the Council, addressed the Committee on the work of the Council in enforcing the Fair Housing Act. Mr. Stowe also expressed the Council's support for protection for the handicapped against housing discrimination.

The final speaker was Mr. Eugene Hafer, legal counsel for the North Carolina Association of Realtors. Mr. Hafer presented the Association's position that sexual harassment of tenants should be treated in the law as a criminal offense. Mr. Hafer also spoke on the Association's reservations about including handicapped persons within the protections of the Fair Housing Act, especially in regard to the definition of handicapped and the deinstitutionalized mentally disabled.

The third meeting of the Committee was held on February 3, 1988. At this meeting, the Committee continued its consideration of discrimination issues. Committee Counsel reviewed Senate Bill 558, proposed amendments to the Federal Fair Housing Act, which would provide protection for the handicapped and families against discrimination in housing. Mr. Daniel Addison, North Carolina Human Relations Council, spoke on the impact of passage of the federal bill on the State Fair Housing Act. Committee Counsel also reviewed housing discrimination laws of other States.

The Committee discussed various drafts of legislation to amend the State Fair Housing Act. These included Senate Bill 314 which would extend protection to the handicapped, a draft of legislation to protect both the handicapped and families as in federal Senate Bill 558, House Bill 1157 which would make sexual harassment a

discriminatory act and provide a civil penalty, a draft bill from the Association of Realtors making sexual harassment a felony, a draft bill by Counsel making sexual harassment a misdemeanor and one making it a civil offense, and a draft bill prepared by Mr. Donald Saunders, North Carolina Legal Services, making retaliatory eviction for refusal of sexual advances unlawful.

The Committee met again on March 2, 1988. The Committee heard from Ms. Willie Jean Jennings, representing the Human Relations Council. Ms. Jennings presented the Council's resolutions supporting civil and criminal penalties for sexual harassment of tenants in rental housing and prohibition of housing discrimination against the physically and mentally handicapped.

The Committee then considered redrafts of legislation presented at its February meeting. After thorough discussion, the members voted to recommend a bill making sexual harassment of tenants in rental housing a civil offense and another amending the State Fair Housing Act to protect the handicapped against discrimination.

The fifth meeting of the Committee was held on April 6, 1988. The Committee first considered redrafts of bills making sexual harassment a criminal act. The members approved for recommendation to the General Assembly a bill that would make sexual harassment of tenants in rental housing a general misdemeanor with optional community service as one component of the authorized penalty.

The Committee then turned to the issue of protecting families with children from discrimination in housing. Counsel reviewed familial status provisions of anti-discrimination statutes of other states and presented information on the various incentives and programs enacted in other states to spur the development of lowcost housing. Mr. A. Robert Kucab, Executive Director of the North Carolina Housing

Finance Agency, spoke to the members on the decrease in federal involvement in the production and subsidization of lowcost housing. Counsel then explained the draft of a bill prohibiting discrimination against families. After lengthy discussion, the Committee decided to postpone action on the draft to a future meeting.

The Committee met again on September 7, 1988. As this was the first meeting after the hiatus for the 1988 Session of the General Assembly, Committee Counsel reviewed the bills before the Committee. This included the civil and criminal bills on sexual harassment, fair housing protection for the handicapped, and anti-discrimination protection for families. Mr. Daniel Addison, Human Relations Council, gave a detailed explanation of the Federal Fair Housing Amendments of 1988, which had been passed by both houses of Congress. The Committee then discussed the federal bill in relation to the North Carolina Fair Housing Act and the changes to it proposed by the Committee. Counsel was directed to draft amendments to the State Act to keep it in conformity with the changes in the federal law.

Mr. A. Robert Kucab, Housing Finance Agency, presented ten proposed program initiatives to reduce the shortage of lowcost housing in the State. The meeting ended with a brief, preliminary discussion on the need to consolidate the thirteen agencies with housing responsibilities into a single agency or new department of State government.

The Committee met again on October 5, 1988. Committee Counsel explained a draft of a bill amending the State Fair Housing Act to keep it in compliance with federal law by providing protection for the handicapped and families. Mr. Daniel Addison presented a draft of two additional amendments to the Act on behalf of the Human Relations Council. The Committee discussed both the draft bill and the

amendments at some length before approving them for recommendation to the General Assembly.

Mr. A. Robert Kucab of the Housing Finance Agency briefly explained the prioritized list of the housing initiatives which had been requested at the September meeting. Committee Counsel reviewed the chart of State departments and agencies with housing-related functions.

Mr. Leigh Wilson, Executive Director of the North Carolina Commission on Jobs and Economic Growth, presented that Commission's recommendation that housing development and assistance functions be consolidated into a Department of Housing and Community Assistance. Mr. Don Saunders, speaking as a representative of the Housing Partnership, asked the Committee members to keep in mind the changes in the way lowcost housing is delivered as they deliberated the consolidation issue. Mr. Saunders emphasized that increased reliance on public/private cooperation in housing development makes a coordinated government policy essential. Mr. Ellis Hankins, North Carolina League of Municipalities, reiterated the need for a coordinated policy-making and development entity and expressed the League's recommendation that the General Assembly establish a Department of Housing which would include a Division of Community Assistance. Mr. Greg Warren spoke on behalf of the North Carolina Low Income Housing Coalition, a nonprofit, educational group. He stressed that any reorganization should maintain the link between local planning and Community Assistance.

The final meeting of the Committee was held on November 16, 1988. After reviewing the positions on housing consolidation expressed at the October meeting, the Committee continued to hear testimony on the issue. First to speak was Mr. John Crosland, Chairman of the North Carolina Housing Finance Agency. Mr. Crosland

called for an expansion of the responsibilities of the Agency to include such existing housing production activities as administration of the Community Development Block Grant and homeless assistance programs now in the Community Assistance Division of NR&CD.

Mr. Claude E. Pope, Secretary of Commerce, presented that department's proposal for consolidation. Under this plan, the Community Assistance Division of NR&CD would be moved to Commerce and a new division of housing headed by a deputy secretary would be created. The Housing Finance Agency would maintain its autonomous status with continued oversight by the Secretary of Commerce.

The last speaker was Mr. Travis Porter, representing the North Carolina Home Builders Association. Mr. Porter expressed the Association's opinion that the success of the Housing Finance Agency in recent years is due largely to its ability to operate independently and stressed the necessity of keeping it so. Although the Association had no formal position on housing consolidation, Mr. Porter said that it would favor some form of consolidation.

The Committee then considered the various options before it. After Committee discussion, Representative Milton Fitch put forth a recommendation for consideration. More discussion ensued after which the recommendation was adopted for submission to the General Assembly.

FINDINGS AND RECOMMENDATIONS

In studying the issues of discrimination in housing against women, the handicapped, and families and of consolidation of State housing functions into a single agency or department, the Study Commission on Housing and Housing Discrimination received much data and heard a variety of statements of opinion and philosophy. Notwithstanding their differences, several common threads run throughout the presentations to the Commission. These threads are the bases of the findings and recommendations of the Commission which are discussed in the following paragraphs.

The Committee found that sexual harassment of women tenants in rental housing is a serious and growing problem in North Carolina. Generally sexual harassment takes the form of a demand for sexual favors in exchange for the continued right to occupy a premises or for maintenance and other services which are a usual part of a rental agreement and is accompanied by threats of eviction for non-compliance. Low-income women, especially those dependant on public assistance, are the most likely to fall prey to the unwelcome advances of a landlord, property manager, or maintenance person. The housing options for low-income women are generally greatly restricted, leaving them highly vulnerable to threats of eviction. Although the North Carolina Fair Housing Act prohibits discrimination in real estate transactions on the basis of sex, the Committee recommends that a clear statement that such behavior is not acceptable be made a part of the Fair Housing Act and the criminal law.

In North Carolina, as in the nation, the handicapped and families with children are having increasing difficulty finding housing accommodations. It is estimated that at least 25% of housing nationwide is closed to people with children and another 50% places severe restrictions on them. Because their options are already limited by economics, low-income families are most affected by housing policies which allow discrimination based on familial status. Moreover, a shortage of accessible housing for the handicapped coupled with misconceptions about their ability to live independently increases the difficulty they face in finding a place to live.

On September 13, 1988, the federal government acted to amend the Federal Fair Housing Act to prohibit discrimination against the handicapped and families with children. In order to keep the State in conformity with federal law and to respond to the plight of families and the handicapped, the Committee recommends that the North Carolina Fair Housing Act be amended to provide similar protections.

Those in need of housing assistance in North Carolina face the additional challenge of finding out what help is available and from where. At present, thirteen departments or agencies of State government provide some form of housing assistance. Of the departments directly involved in housing assistance, the Department of Natural Resources and Community Development (NR&CD), through the Community Assistance and Economic Opportunity Divisions, has this activity as a major function. The testimony before the Committee clearly showed that the increasing withdrawal of federal involvement in housing has changed the way lowcost housing is delivered. As a result, the necessity for a joint state-and-local government/private effort in housing development is more crucial than ever. Because of its existing link with local government, the Committee believed that consolidation of functions into NR&CD would most effectively satisfy this need. With this in mind, the Committee approved a

motion that would move the low-income home weatherization program from the Energy Division of the Department of Commerce to NR&CD and the establishment of a toll-free telephone number for housing assistance information in that Department. In addition, anticipating that the Environmental Review Commission would make recommendations that would effectively dismantle NR&CD, the Committee approved a contingent recommendation.

Subsequent to the final meeting of the Housing and Housing Discrimination Study Commission, the Environmental Review Commission did recommend that NR&CD be abolished and that all housing assistance functions of that department be transferred to other existing departments. Therefore, the Committee recommends that the Community Assistance and Economic Opportunity Divisions be transferred to the Department of Commerce to be part of a new Division of Housing under a deputy secretary and that the toll-free telephone number for housing information be set up under this new division.

The Committee's recommendations are found in Legislative Proposals I, II, III, IV, and V in Appendix C to this report.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA 1987 SESSION RATIFIED BILL

CHAPTER 873 HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

...

(21) Need for a State Department of Housing (H.J.R. 1303-Fitch),

...

(29) Housing Discrimination (H.B. 1965-Barnes),

...

Sec. 2.6. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation to the 1989 General Assembly.

Sec. 2.7. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

. . .

-----EFFECTIVE DATE

Sec. 31. This act is effective on July 1, 1987.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

I

HOUSE JOINT RESOLUTION 1303

Sponsors: Representatives Fitch; Bowman.

Referred to: Appropriations.

May 6, 1987

1 A JOINT RESOLUTION TO AUTHORIZE THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY WHETHER THE VARIOUS STATE
3 DEPARTMENTS, AGENCIES AND OFFICES WITH RESPONSIBILITIES
4 FOR HOUSING POLICIES AND PROGRAMS SHOULD BE
5 CONSOLIDATED TO FORM A NORTH CAROLINA DEPARTMENT OF
6 HOUSING.

7

8

9

. . .

10 Now, therefore, be it resolved by the House of Representatives, the Senate
11 concurring:

12 Section 1. The Legislative Research Commission may study
13 whether the various State departments, agencies and offices with
14 responsibilities for housing policies and programs should be consolidated to
15 form a North Carolina Department of Housing. The study may include but is
16 not limited to housing programs administered by the Departments of
17 Administration, Commerce, Insurance, Human Resources, Natural Resources

1 and Community Development and by the Housing Finance Agency and the
2 Housing Commission in the Office of the Governor.

3 Sec. 2. The study may include but is not limited to the following
4 areas: the State's present housing policies and the cooperation between the
5 various State departments, agencies and offices in the implementation of
6 housing programs; the accessibility of information about the State's housing
7 programs to the citizens of the State; the effectiveness of the State's housing
8 programs in meeting the needs of all of its citizens at every income level; the
9 cooperation between the State and public and private developers to provide
10 decent, safe, sanitary and energy-efficient residential housing at affordable
11 prices to low and very low income families; and the feasibility of a Department
12 of Housing in the State of North Carolina.

. . .

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

I

HOUSE BILL 1965

Short Title: LRC Study/Discrimination in Housing.

(Public)

Sponsors: Representative Barnes.

Referred to: Appropriations.

May 27, 1987

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION
TO STUDY FAIR HOUSING IN NORTH CAROLINA AND
APPROPRIATING FUNDS FOR THIS STUDY.

...

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission shall study
discrimination in housing in North Carolina as it pertains to the Fair Housing
Act and the study shall include sexual harassment in the rental of housing.
discrimination against families with children, discrimination against persons
with handicaps, and other areas of unfair treatment in the sale or rental of
residential housing.

...

APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON HOUSING AND HOUSING DISCRIMINATION

Pres. Pro Tem's Appointments

Sen. William D. Goldston, Jr., Cochair
Post Office Box 307
Eden, NC 27288
(919) 627-1495

Mrs. Eva M. Clayton
59 River Road
Littleton, NC 27580
(919) 586-4865

Sen. Laurence A. Cobb
2500 First Union Plaza
Charlotte, NC 28282
(704) 375-1431

Sen. Ralph A. Hunt
433 Pilot Street
Durham, NC 27707
(919) 688-4889

Sen. Mary P. Seymour
1105 Pender Lane
Greensboro, NC 27408
(919) 288-5631

Staff: Ms. Linda J. Kimbell
Legislative Services Office
(919) 733-2578

Clerk: Ms. Ferebee Stainback
(919) 733-5858 (O)
(919) 847-5820 (H)

LRC Member: Rep. John T. Church

Speaker's Appointments

Rep. Anne C. Barnes, Cochair
313 Severin Street
Chapel Hill, NC 27514
(919) 967-7610

Rep. W. Pete Cunningham
3121 Valleywood Place
Charlotte, NC 28216
(704) 394-0919

Rep. Milton F. Fitch, Jr.
615 East Nash Street
Wilson, NC 27893
(919) 291-6500

Rep. John L. Tart
Route 1, Box 125 A
Goldshoro, NC 27530
(919) 934-0200

Rep. Betty H. Wiser
Post Office Box 33361
Raleigh, NC 27606
(919) 821-3818

APPENDIX C

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89-RZ-001
THIS IS A DRAFT 11/01/88

Short Title: FAIR HOUSING/SEXUAL HARASSMENT

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FAIR HOUSING ACT TO PROHIBIT SEXUAL
HARASSMENT IN THE RENTAL OF RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 41A of the General Statutes is amended by
adding a new section to read as follows:

"§ 41A-4.1. Sexual harassment.-- (a) Unlawful discrimination. It is an
unlawful discriminatory housing practice for any lessor of residential real
property or the agent of any lessor of residential real property to harass on the
basis of sex any lessee, or person residing with the lessee, of the property.
For purposes of this section, 'harassment' shall include unwelcome sexual
advances, requests for sexual favors, and other verbal or physical conduct of a
sexual nature when (i) submission to such conduct is made either explicitly or
implicitly a term of the continuation of the lease agreement, (ii) submission to
or rejection of such conduct by an individual is used to determine whether
normal privileges under the lease are provided, or (iii) such conduct has the

1 purpose or effect of unreasonably creating an intimidating, hostile, or offensive
2 living environment for the lessee.

3 (b) The lessor shall be liable for the act or acts of sexual harassment
4 committed by his agent against a lessee or prospective lessee of the residential
5 real property only if:

6 (1) the lessor authorized or encouraged the act or acts of sexual
7 harassment;

8 (2) the lessor knew or reasonably should have known of the
9 occurrence of the act or acts of sexual harassment and the act
10 or acts were committed by the agent during or in conjunction
11 with the performance of an assigned duty; or

12 (3) the lessor knew of the occurrence of the act or acts of sexual
13 harassment, the act or acts were committed by the agent on
14 the lessor's premises, and the lessor failed to take adequate
15 steps to protect the lessee from further sexual harassment by
16 the agent.

17 This subsection shall not affect a lessor's liability for negligence in hiring or
18 retaining an agent who commits an act or acts of sexual harassment."

19 Sec. 2. This act is effective upon ratification.

LEGISLATIVE PROPOSAL I
SECTION-BY-SECTION ANALYSIS

This bill amends the State Fair Housing Act (G.S. 41A) to prohibit a lessor (or his agent) of residential property from sexually harassing a lessee or person residing with the lessee. Sexual harassment occurs when a lessor engages in unwelcome physical or verbal conduct of a sexual nature and makes it clear, either explicitly or implicitly, that the lessee must submit in order to avoid eviction or to obtain normal privileges under the lease. Sexual harassment also occurs if the unwelcome conduct creates an intimidating, hostile, or offensive living environment for the lessee.

The bill makes a lessor liable for any such acts committed by an agent with the lessor's authorization or encouragement. The bill also makes a lessor liable for acts committed by an agent performing an assigned duty if the lessor knew or should have known about the acts. In addition, a lessor is liable for an agent's acts committed on the lessor's premises and which the lessor knew about when the lessor does not take steps to protect the lessee from further harassment.

Section 2 makes the act effective on ratification.

LEGISLATIVE PROPOSAL II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89-RZ-002
THIS IS A DRAFT 11/01/88

Short Title: SEXUAL HARASSMENT MISDEMEANOR

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SEXUAL HARASSMENT IN THE RENTAL OF
RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by
adding a new Section 14-395.1 to read:

"§ 14-395.1. Sexual harassment.--(a) Offense. If any lessor of residential
real property or the agent of any lessor of residential real property shall harass
on the basis of sex any lessee or prospective lessee of the property, he shall be
guilty of a misdemeanor. A term of imprisonment may be suspended on
condition that the offender be ordered to perform community service consistent
with the nature and seriousness of the harassing conduct.

(b) Definitions. For purposes of this section,

(1) 'Harass' shall include unwelcome sexual advances, requests
for sexual favors, and other verbal or physical conduct of a
sexual nature when (i) submission to such conduct is made
either explicitly or implicitly a term of the execution or
continuation of the lease agreement, (ii) submission to or

1 rejection of such conduct by an individual is used to
2 determine whether normal privileges under the lease are
3 provided, or (iii) such conduct has the purpose of
4 unreasonably creating an intimidating, hostile, or offensive
5 living environment for the lessee;

6 (2) 'Lessee' means a person who enters into a residential rental
7 agreement with the lessor and all other persons residing in the
8 lessee's rental unit.'

9 Sec. 2. This act shall become effective July 1, 1989, and shall
10 apply to acts committed on and after that date.

LEGISLATIVE PROPOSAL II
SECTION-BY-SECTION ANALYSIS

This bill amends Chapter 14 of the General Statutes to create criminal liability for sexual harassment of tenants in residential rental property.

Section 1 makes it a misdemeanor for a lessor or the lessor's agent to sexually harass a lessee or prospective lessee of residential property. Because the bill specifies no penalty for the offense, it is punishable under G.S. 14.3(a) which stipulates punishment by fine, up to two years imprisonment, or both. In lieu of imprisonment, a judge may order an offender to perform community service.

Sexual harassment occurs when a lessor engages in unwelcome physical or verbal conduct of a sexual nature and makes it clear, either explicitly or implicitly, that the lessee must submit in order to obtain a lease or to avoid eviction, or to obtain normal privileges under the lease. Sexual harassment also occurs if the unwelcome conduct creates an intimidating, hostile, or offensive living environment for the lessee. The protection afforded the lessee also extends to all others residing in the leased unit.

Section 2 makes the act effective July 1, 1989 and applicable to acts committed on and after this date.

LEGISLATIVE PROPOSAL III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89-RZ-003
THIS IS A DRAFT 11/01/88

Short Title: FAIR HOUSING/HANDICAPPED & FAMILY (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE FAIR HOUSING ACT BY EXTENDING
PROTECTION TO THE HANDICAPPED AND FAMILIES WITH
CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41A-3 is amended by adding four new subdivisions
to read:

"(1a) 'Covered multifamily dwelling' means

(a) a building with four or more units if the building has one or
more elevators, and

(b) ground floor units in any other building with four or more
units.

(1b) 'Familial status' means one or more individuals' (who have not
attained the age of eighteen years) being domiciled with

(a) a parent or another person having legal custody of such
individual or individuals; or

(b) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(3a) 'Handicapping condition' means (i) a physical or mental impairment which substantially limits one or more of a person's major life activities, (ii) a record of having such an impairment, or (iii) being regarded as having such an impairment. Handicapping condition does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. 802, the Controlled Substances Act. The protections afforded against discrimination on the basis of handicapping condition shall apply to a buyer or renter of a dwelling, a person residing in or intending to reside in the dwelling after it is sold, rented, or made available, or any person associated with the buyer or renter.

(4a) 'Housing for older persons' means housing

(a) provided under any State or Federal program specifically designed and operated to assist elderly persons as defined in the program; or

(b) intended for and solely occupied by persons 62 years or older; or

(c) intended for and operated for occupancy by at least one person 55 years or older per unit as shown by such factors as (i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if this is not practicable, that the housing provides important housing opportunities for older persons; and (ii) at least 80 percent of the units are occupied by at least one person 55 years or older per unit; and (iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years or older.

Housing in which there are units occupied by persons who do not meet the age requirements of subdivisions (b) and (c) or in which there are unoccupied units

1 shall meet the requirements of housing for older persons if future occupants of
2 these units meet the age requirements."

3 Sec. 2. G.S. 41A-4 reads as rewritten:

4 "**§ 41A-4. Unlawful discriminatory housing practices.**

5 (a) It is an unlawful discriminatory housing practice for any person in a real
6 estate transaction, because of race, color, religion, sex, ~~or national origin,~~
7 national origin, handicapping condition, or familial status to:

8 (1) Refuse to engage in a real estate transaction;

9 (2) Discriminate against a person in the terms, conditions, or
10 privileges of a real estate transaction or in the furnishing of
11 facilities or services in connection therewith;

12 (2a) Refuse to permit, at the expense of a handicapped person,
13 reasonable modifications of existing premises occupied or to
14 be occupied by the person if the modifications are necessary
15 to the handicapped person's full enjoyment of the premises;

16 (2b) Refuse to make reasonable accommodations in rules, policies,
17 practices, or services, when these accommodations may be
18 necessary to a handicapped person's equal use and enjoyment
19 of a dwelling;

20 (2c) Fail to design and construct covered multifamily dwellings
21 available for first occupancy after March 13, 1991, so that (i)
22 the public and common use portions are readily accessible to
23 and usable by handicapped persons; (ii) there is an accessible
24 route into and through all dwellings and units therein; (iii) all
25 doors designed to allow passage into, within, and through
26 these dwellings and individual units therein are wide enough
27 for wheelchairs; (iv) light switches, electrical outlets,
28 thermostats, and other environmental controls are in
29 accessible locations; (v) bathroom walls are reinforced to
30 allow later installation of grab bars; and (vi) kitchens and
31 bathrooms have space for an individual in a wheelchair to
32 maneuver;

33 (3) Refuse to receive or fail to transmit a bona fide offer to
34 engage in a real estate transaction;

35 (4) Refuse to negotiate for a real estate transaction;

- (5) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to his attention, or refuse to permit him to inspect real property;
- (6) Make, print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form or application for a real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (8) Otherwise make unavailable or deny housing.

(b) It is an unlawful discriminatory housing practice for a financial institution to whom application is made for a loan, or other financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property to:

- (1) Discriminate against the applicant because of race, color, religion, sex, ~~or national origin~~ national origin, handicapping condition, or familial status; or
- (2) Use a form of application for a loan, or other financial assistance, or make or keep a record of inquiry in connection with an application for a loan, or other financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination as to race, color, religion, sex, ~~or national origin~~ national origin, handicapping condition, or familial status.

The provisions of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

1 (c) It is an unlawful discriminatory housing practice for a person to induce
2 another to enter into a real estate transaction from which such person may
3 profit;

4 (1) By representing that a change has occurred, or may or will
5 occur in the composition of the residents of the block,
6 neighborhood, or area in which the real property is located
7 with respect to race, color, religion, sex, ~~or national origin~~
8 national origin, handicapping condition, or familial status of
9 the owners or occupants; or

10 (2) By representing that a change has resulted, or may or will
11 result in the lowering of property values, an increase in
12 criminal or antisocial behavior, or a decline in the quality of
13 schools in the block, neighborhood, or area in which the real
14 property is located.

15 (d) It is an unlawful discriminatory housing practice to deny any person who
16 is otherwise qualified by State law membership in any real estate brokers'
17 organization, multiple listing service, or other service, organization, or facility
18 relating to the business of engaging in real estate transactions, or to
19 discriminate in the terms or conditions of such membership because of race,
20 color, religion, sex, ~~or national origin~~ national origin, handicapping condition,
21 or familial status."

22 Sec. 3. G.S. 41A-5 reads as rewritten:

23 "§ 41A-5. Proof of violation.

24 (a) It is a violation of this Chapter if:

25 (1) A person by his act or failure to act intends to discriminate
26 against a person. A person intends to discriminate if, in
27 committing an unlawful discriminatory housing practice
28 described in G.S. 41A-4 he was motivated in full, or in any
29 part at all, by race, color, religion, sex, national origin, ~~or~~
30 ~~any other characteristic or classification protected by this~~
31 Chapter handicapping condition, or familial status. An intent
32 to discriminate may be established by direct or circumstantial
33 evidence; or

34 (2) A person's act or failure to act has the effect, regardless of
35 intent, of discriminating, as set forth in G.S. 41A-4, against a

1 person ~~of a particular~~ on the basis of race, color, religion,
2 sex, national origin, ~~or any other characteristic or~~
3 ~~classification protected by this Chapter.~~ handicapping
4 condition, or familial status. However, it is not a violation of
5 this Chapter if a person whose action or inaction has an
6 unintended discriminatory effect, proves that his action or
7 inaction was motivated and justified by business necessity.

8 (b) It shall be no defense to a violation of this Chapter that the violation
9 was requested, sought, or otherwise procured by another person."

10 Sec. 4. G.S. 41A-6 reads as rewritten:

11 "**§ 41A-6. Exemptions.**

12 (a) The provisions of G.S. 41A-4 do not apply to the following:

- 13 (1) The rental of a housing accommodation in a building which
14 contains housing accommodations for not more than four
15 families living independently of each other, if the lessor or a
16 member of his family resides in one of the housing
17 accommodations;
- 18 (2) The rental of a room or rooms in a private house, not a
19 boarding house, if the lessor or a member of his family
20 resides in the house;
- 21 (3) Religious institutions or organizations or charitable or
22 educational organizations operated, supervised, or controlled
23 by religious institutions or organizations which give
24 preference to members of the same religion in a real estate
25 transaction, as long as membership in such religion is not
26 restricted by race, color, sex, ~~or national origin.~~ national
27 origin, handicapping condition, or familial status;
- 28 (4) Private clubs, not in fact open to the public, which incident to
29 their primary purpose or purposes provide lodging, which
30 they own or operate for other than a commercial purpose, to
31 their members or give preference to their members;
- 32 (5) With respect to discrimination based on sex, the rental or
33 leasing of housing accommodations in single-sex dormitory
34 property;

1 (6) Any person, otherwise subject to its provisions, who adopts
2 and carries out a plan to eliminate present effects of past
3 discriminatory practices or to assure equal opportunity in real
4 estate transactions, if the plan is part of a conciliation
5 agreement entered into by that person under the provisions
6 of this Chapter or under the provisions of the Federal Fair
7 Housing Act, 42 U.S.C. § 3601 et seq., or is voluntary and is
8 consistent with the purposes thereof;

9 (7) The sale, rental, exchange, or lease of commercial real estate.
10 For the purposes of this Chapter, commercial real estate
11 means real property which is not intended for residential use.

12 (b) No provision of this Chapter requires that a dwelling be made available
13 to an individual whose tenancy would constitute a direct threat to the health or
14 safety of other individuals or whose tenancy would result in substantial physical
15 damage to the property of others.

16 (c) No provision of this Chapter limits the applicability of any reasonable
17 local or State restrictions regarding the maximum number of occupants
18 permitted to occupy a dwelling unit. Nor does any provision in this Chapter
19 regarding familial status apply with respect to housing for older persons.

20 (d) Nothing in this Chapter shall be deemed to nullify any provisions of
21 the North Carolina Building Code applicable to the construction of residential
22 housing for the handicapped.

23 Sec. 5. This act is effective upon ratification.

LEGISLATIVE PROPOSAL III

SECTION-BY-SECTION ANALYSIS

This bill amends the State Fair Housing Act (G.S. 41A) to conform it to the recently enacted amendments to the Federal Fair Housing Act, which extends fair housing protection to the handicapped and families with children.

Section 1 adds four new definitions to G.S. 41A-3. New subdivision (1a) defines "covered multifamily dwelling" as (1) a building with four or more units if it has an elevator(s) and (2) ground floor units in any other four-or-more unit building. Subdivision (1b) defines "familial status" as children under age eighteen residing with a parent, a legal guardian, or the designee of the parent or guardian. The "familial status" protections also apply to those who are pregnant or who are securing legal custody of a child under age eighteen.

Subdivision (3a) defines "handicapping condition" as a physical or mental impairment which substantially limits a major life activity or having a record of or being regarded as having such an impairment. Active illegal use of or addiction to a controlled substance (as defined in the Federal Controlled Substances Act) is not a handicapping condition. The "handicap" protections apply to a buyer or renter of a dwelling, a person residing in the dwelling and any person associated with the buyer or renter.

Subdivision (4a) defines "housing for older persons." This is housing for the elderly provided under State or Federal programs, housing intended for and occupied only by those age 62 or older, and housing intended for and occupied by at least one person age 55 or older.

Section 2 amends G.S. 41A-4 by adding handicapping condition and familial status to the list of protected conditions on the basis of which it is unlawful to discriminate and adds three new unlawful discriminatory housing practices. Subsection (2a) makes it unlawful to refuse a handicapped person permission to make reasonable modifications of premises to enable him to fully enjoy them. Subsection (2b) makes it unlawful not to make reasonable modifications in rules, policies, practices, or services in order to give a handicapped person full use and enjoyment of the premises. Subsection (2c) makes it unlawful to design and construct buildings that are not accessible to the handicapped and adaptable to their needs. This subsection spells out specifics regarding passageway and door accessibility, placement of electrical and thermostat controls, bathroom wall reinforcement, and interior space in which to maneuver wheelchairs. These standards are applicable to construction available for occupancy after March 13, 1991.

Section 3 amends G.S. 41A-5 by adding handicapping condition and familial status to the list of characteristics on the basis of which it is unlawful to discriminate. Section 4 amends G.S. 41A-6 by designating the existing provisions as subsection (a), adding handicapping condition and familial status to the list of protected characteristics, and adding new subsections (b), (c), and (d). Subsection (b) exempts from the protection of the Fair Housing Act anyone whose tenancy in a dwelling would be a direct threat to the health and safety of others or to the safety of their property. Subsection (c) allows reasonable State and local occupancy standards and exempts housing for older persons from the familial status provisions of the Act. Subsection (d) states that these amendments will not effect the handicapped provisions of the North Carolina Building Code.

Section 5 makes the act effective on ratification.

LEGISLATIVE PROPOSAL IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89-RZ-004

THIS IS A DRAFT 14-DEC-88 11:22:38

Short Title: FAIR HOUSING/ADS & TEMP RELIEF

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE STATE FAIR HOUSING ACT TO CLARIFY
3 PROVISIONS REGARDING DISCRIMINATORY ADVERTISING AND
4 THE AVAILABILITY OF TEMPORARY RELIEF PENDING
5 RESOLUTION OF A DISCRIMINATION COMPLAINT.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 41A-6 reads as rewritten:

8 "§ 41A-6. Exemptions. The provisions of G.S. 41A-4 (except for
9 subsection (a)(6)) do not apply to the following:

10 (1) The rental of a housing accommodation in a building which contains
11 housing accommodations for not more than four families living independently
12 of each other, if the lessor or a member of his family resides in one of the
13 housing accommodations;

14 (2) The rental of a room or rooms in a private house, not a boarding house,
15 if the lessor or a member of his family resides in the house;

1 (3) Religious institutions or organizations or charitable or educational
2 organizations operated, supervised, or controlled by religious institutions or
3 organizations which give preference to members of the same religion in a real
4 estate transaction, as long as membership in such religion is not restricted by
5 race, color, sex, or national origin;

6 (4) Private clubs, not in fact open to the public, which incident to their
7 primary purpose or purposes provide lodging, which they own or operate for
8 other than a commercial purpose, to their members or give preference to their
9 members;

10 (5) With respect to discrimination based on sex, the rental or leasing of
11 housing accommodations in single-sex dormitory property;

12 (6) Any person, otherwise subject to its provisions, who adopts and carries
13 out a plan to eliminate present effects of past discriminatory practices or to
14 assure equal opportunity in real estate transactions, if the plan is part of a
15 conciliation agreement entered into by that person under the provisions of this
16 Chapter or under the provisions of the Federal Fair Housing Act, 42 U.S.C. §
17 3601 et seq. or is voluntary and is consistent with the purposes thereof;

18 (7) The sale, rental, exchange, or lease of commercial real estate. For the
19 purposes of this Chapter, commercial real estate means real property which is
20 not intended for residential use."

21 Sec. 2. G.S. 41A-7 reads as rewritten:

22 "**§ 41A-7. Enforcement.**

23 (a) Any person who claims to have been injured by an unlawful
24 discriminatory housing practice or who reasonably believes that he will be
25 irrevocably injured by an unlawful discriminatory housing practice may file a
26 complaint with the North Carolina Human Relations Council. Complaints shall
27 be in writing, shall state the facts upon which the allegation of an unlawful
28 discriminatory housing practice is based, and shall contain such other
29 information and be in such form as the Council requires. Council employees
30 shall assist complainants in reducing complaints to writing and shall assist in
31 setting forth the information in the complaint as may be required by the
32 Council. Within 10 days after receipt of the complaint, the Director of the
33 Council shall furnish a copy of the complaint to the person who allegedly
34 committed or is about to commit the unlawful discriminatory housing practice.

1 (b) A complaint under subsection (a) shall be filed within 180 days after the
2 alleged unlawful discriminatory housing practice occurred. A respondent may
3 file an answer to the complaint against him within 10 days after receiving a
4 copy of the complaint. With the leave of the Council, which shall be granted
5 whenever it would be reasonable and fair to do so, the complaint and the
6 answer may be amended at any time. Complaints and answers shall be verified.

7 (c) Whenever another agency of the State or any other unit of government of
8 the State has jurisdiction over the subject matter of any complaint filed under
9 this section, and such agency or unit of government has legal authority
10 equivalent to or greater than the authority under this Chapter to investigate or
11 act upon the complaint, the Council shall be divested of jurisdiction over such
12 complaint. The Council shall, within 30 days, notify the agency or unit of
13 government of the apparent unlawful discriminatory housing practice, and
14 request that the complaint be investigated in accordance with such authority.

15 (d) Complaints may be resolved at any time by informal conference,
16 conciliation, or persuasion. Nothing said or done in the course of such
17 informal procedure may be made public by the Council or used as evidence in
18 a subsequent proceeding under this Chapter without the written consent of the
19 person concerned.

20 (e) Upon receipt of a complaint, the Council shall investigate the complaint
21 to ascertain the facts relating to the alleged unlawful discriminatory housing
22 practice. If the complaint is not resolved before the investigation is complete,
23 upon completion of the investigation, the Council shall determine whether or
24 not there are reasonable grounds to believe that an unlawful discriminatory
25 housing practice has occurred. The Council shall make a determination within
26 90 days after receiving the complaint, unless the Council determines that good
27 cause exists for further delay.

28 If the Council concludes at any time following the filing of a complaint
29 under this section that prompt judicial action is necessary to carry out the
30 purposes of this Chapter, the Council may commence a civil action for, and
31 the court may grant, appropriate temporary or preliminary relief pending final
32 disposition of the complaint. Any temporary restraining order or other order
33 granting preliminary or temporary relief shall be issued in accordance with the
34 North Carolina Rules of Civil Procedure. The commencement of a civil action
35 under this subsection does not affect the continuation of the Council's

1 investigation or the initiation of a separate civil action pursuant to subsections
2 (f), (h), or (i) of this section.

3 (f) If the Council finds no reasonable ground to believe that an unlawful
4 discriminatory housing practice has occurred or is about to occur it shall
5 dismiss the complaint and issue to the complainant a right-to-sue letter which
6 will enable him to bring a civil action in superior court.

7 (g) If the Council finds reasonable grounds to believe that an unlawful
8 discriminatory housing practice has occurred or is about to occur it shall
9 proceed to try to eliminate or correct the discriminatory housing practice by
10 informal conference, conciliation, or persuasion.

11 (h) If the Council is unable to resolve the alleged unlawful discriminatory
12 housing practice it may declare that conciliation efforts have failed. Upon
13 making such a declaration, the Council may:

14 (1) Dismiss the complaint and issue to the complainant a
15 right-to-sue letter which will enable him to bring a civil action
16 in superior court; or

17 (2) Commence a civil action in superior court, in its own name,
18 or in its own name on behalf of the complainant. In such an
19 action, the Council shall be represented by an attorney
20 employed by the Council, and G.S. 114-2 shall not apply.

21 (i) If after 130 days after a complaint has been filed the Council has failed
22 to resolve the complaint or issue a right-to-sue letter, the Council shall, upon
23 written request of the complainant, issue a right-to-sue letter to the
24 complainant. Issuance of a letter under this subsection shall not prevent the
25 Council from commencing a civil action under subsection (h)(2) of this section
26 which action shall be consolidated with any action filed by the complainant.

27 (j) The court may grant relief, as it deems appropriate, any permanent or
28 temporary injunction, temporary restraining order, or other order, and may
29 award to the plaintiff, actual and punitive damages, and may award court
30 costs, and reasonable attorney's fees to the prevailing party, other than a State
31 agency or commission; Provided, however, that a prevailing respondent may
32 be awarded court costs and reasonable attorney's fees only upon a showing that
33 the case is frivolous, unreasonable, or without foundation.

34 If the action is brought by the Council on behalf of a complainant, the court
35 may award actual and punitive damages to the complainant. The court may

1 award punitive damages to a prevailing plaintiff or complainant only if it is
2 shown that the defendant committed a violation of this Chapter with intent to
3 discriminate.

4 (k) Parties to a civil action brought pursuant to this Chapter shall have the
5 right to a jury trial as provided for by the North Carolina Rules of Civil
6 Procedure."

7 Sec. 3. This act is effective upon ratification.

LEGISLATIVE PROPOSAL IV
SECTION-BY-SECTION ANALYSIS

Section 1 of this bill amends G.S. 41A-6 of the North Carolina Fair Housing Act to clarify provisions concerning discriminatory advertising in real estate transactions. This section allows discrimination in certain types of real estate transactions, for example the rental of a room in a private house in which the lessor also lives or the furnishing of lodging for members of private clubs. Present law permits a lessor in one of these exempted transactions to use discriminatory advertising or application forms. This amendment would ban the use of discriminatory advertisements and forms.

Section 2 amends G.S. 41A-7 to clarify when in the complaint process the Human Relations Council can seek temporary relief. G.S. 41A-7(j) authorizes the court to grant appropriate relief, including temporary injunctions or restraining orders. This amendment specifies that the Human Relations Council may seek such relief at any time after a complaint has been filed if this relief is necessary to carry out the purposes of the Fair Housing Act.

Section 3 makes the act effective on ratification.

LEGISLATIVE PROPOSAL V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89-RZ-005

THIS IS A DRAFT 14-DEC-88 11:22:42

Short Title: Housing Division in Commerce

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO TRANSFER THE DIVISIONS OF COMMUNITY
3 ASSISTANCE AND ECONOMIC OPPORTUNITY FROM THE
4 DEPARTMENT OF NATURAL RESOURCES & COMMUNITY
5 DEVELOPMENT TO THE DEPARTMENT OF COMMERCE, TO DIRECT
6 THE SECRETARY OF COMMERCE TO ESTABLISH A DIVISION OF
7 HOUSING, AND TO ESTABLISH A TOLL-FREE TELEPHONE NUMBER
8 FOR HOUSING ASSISTANCE INFORMATION IN THAT DIVISION.

9 The General Assembly of North Carolina enacts:

10 Section 1. The Divisions of Community Assistance and Economic
11 Opportunity in the Department of Natural Resources and Community
12 Development are transferred to the Department of Commerce. The transfer
13 shall have all the elements of a Type I transfer, as that term is defined in G.S.
14 143A-6(a).

1 Sec. 2. The Secretary of Commerce shall establish a division of
2 housing within that department. The Divisions of Community Assistance and
3 Economic Opportunity shall be located in this new division.

4 Sec. 3. G.S. 143B-431 reads as rewritten:

5 "**§ 143B-431. Department of Commerce; functions.--**(a) The functions of
6 the Department of Commerce, except as otherwise expressly provided by
7 Article 1 of this Chapter or by the Constitution of North Carolina, shall
8 include:

9 (1) All of the executive functions of the State in relation to
10 economic development including by way of enumeration and
11 not of limitation, the expansion and recruitment of
12 environmentally sound industry, labor force development, the
13 promotion of and assistance in the orderly development of
14 North Carolina counties and communities, the promotion and
15 growth of the travel and tourism industries, the development
16 of our State's ports, energy resource management and energy
17 policy development;

18 (2) All functions, powers, duties and obligations heretofore vested
19 in any agency enumerated in Article 15 of Chapter 143A, to
20 wit:

- 21 a. The State Board of Alcoholic Control,
- 22 b. The North Carolina Utilities Commission,
- 23 c. The Employment Security Commission,
- 24 d. The North Carolina Industrial Commission,
- 25 e. State Banking Commission and the Commissioner of
26 Banks,
- 27 f. Savings and Loan Association Division,
- 28 g. The State Savings and Loan Commission,
- 29 h. Credit Union Commission,
- 30 i. The North Carolina Milk Commission,
- 31 j. The North Carolina Mutual Burial Association
32 Commission.
- 33 k. The North Carolina Rural Electrification
34 Authority,

1 1. The North Carolina State Ports Authority, all of which
2 enumerated agencies are hereby expressly transferred by
3 a Type II transfer, as defined by G.S. 143A-6, to this
4 recreated and reconstituted Department of Commerce;
5 and,

6 (3) All other functions, powers, duties and obligations as are
7 conferred by this Chapter, delegated or assigned by the
8 Governor and conferred by the Constitution and laws of this
9 State. Any agency transferred to the Department of
10 Commerce by a Type II transfer, as defined by G.S. 143A-6,
11 shall have the authority to employ, direct and supervise
12 professional and technical personnel, and such agencies shall
13 not be accountable to the Secretary of Commerce in their
14 exercise of quasi-judicial powers authorized by statute,
15 notwithstanding any other provisions of this Chapter,
16 provided that the authority of the North Carolina State Ports
17 Authority to employ, direct and supervise personnel shall be
18 as provided in Part 10 of this Article.

19 (b) The Department of Commerce is authorized to establish and provide for
20 the operation of North Carolina nonprofit corporations to achieve the purpose
21 of aiding the development of small businesses and to achieve the purposes of
22 the United States Small Business Administration's 504 Certified Development
23 Company Program.

24 (c) The Department of Commerce shall have the following powers and
25 duties with respect to local planning assistance:

26 (1) To provide planning assistance to municipalities and counties
27 and joint and regional planning boards established by two or
28 more governmental units in the solution of their local
29 planning problems. Planning assistance as used in this section
30 shall consist of making population, economic, land use,
31 traffic, and parking studies and developing plans based
32 thereon to guide public and private development and other
33 planning work of a similar nature. Planning assistance shall
34 also include the preparation of proposed subdivision
35 regulations, zoning ordinances, capital budgets, and similar

measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities."

Sec. 4. G.S. 143B-433 is amended by adding three new subdivisions:

"(23) Community Assistance Division,

(24) Economic Opportunity Division,

(25) Community Development Council."

Sec. 5. The Community Development Council in the Department of Natural Resources and Community Development is transferred to the

1 Department of Commerce. The transfer shall have all the elements of a Type
2 II transfer as that term is defined in G.S. 143A-6(b).

3 Sec. 6. G.S. 143B is amended by adding a new Part 3A as follows:

4 "PART 3A. Community Development Council.

5
6 **"§ 143B-438.1. Community Development Council; creation, powers and**
7 **duties.--(a) There is hereby created the Community Development Council of**
8 **the Department of Commerce. The Community Development Council shall**
9 **have the following functions and duties:**

10 (1) To advise the Secretary of Commerce with respect to
11 promoting and assisting in the orderly development of North
12 Carolina counties and communities.

13 (2) To advise the Secretary of Commerce with respect to the type
14 and effectiveness of planning and management services
15 provided to local government.

16 (3), (4) Repealed by Session Laws 1977, c. 198, s. 13.

17 (5) The Council shall consider and advise the Secretary of
18 Commerce upon any matter the Secretary may refer to it.

19 **"§ 143B-438.2. Community Development Council; members, chairman,**
20 **selection, removal, compensation, quorum, services.--The Community**
21 **Development Council of the Department of Commerce shall consist of 11**
22 **members appointed by the Governor. The composition of the Council shall be**
23 **as follows: one member who shall be a local government official, one member**
24 **who shall be the Executive Secretary of the League of Municipalities, one**
25 **member who shall be the Executive Secretary of the County Commissioners**
26 **Association, one member who shall represent industry, one member who shall**
27 **represent labor, and six members at large.**

28 The Governor shall designate one member of the Council to serve as
29 chairman at the pleasure of the Governor.

30 The initial members of the Council other than those members serving in an
31 ex officio capacity shall be appointed to serve for terms of four years and until
32 their successors are appointed and qualify. Any appointment to fill a vacancy
33 on the Council created by the resignation, dismissal, death or disability of a
34 member shall be for the balance of the unexpired term.

1 The Governor shall have the power to remove any member of the Council
2 from office in accordance with the provisions of G.S. 143B-16 of the Executive
3 Organization Act of 1973.

4 Members of the Council shall receive per diem and necessary travel and
5 subsistence expenses in accordance with the provisions of G.S. 138- 5.

6 A majority of the Council shall constitute a quorum for the transaction of
7 business.

8 All clerical and other services required by the Council shall be supplied by
9 the Secretary of Commerce.

10 "§ 143B-438.3. Community Development Council: meetings.--The
11 Community Development Council shall meet at least semiannually and may
12 hold special meetings at any time and place within the State at the call of the
13 chairman or upon the written request of least a majority of the members."

14 Sec. 7. G.S. 143-320 reads as rewritten:

15 "§ 143-320. Definitions.--As used in this Article, unless the context
16 otherwise requires:

17 ~~"Council" means the Community Development Council.~~

18 "Department" means the Department of Natural Resources and Community
19 Development.

20 "Secretary" means the Secretary of Natural Resources and Community
21 Development.

22 "Recreation" means those interests that are diversionary in character and
23 that aid in promoting entertainment, pleasure, relaxation, instruction, and
24 other physical, mental, and cultural developments and experiences of a leisure
25 nature, and includes all governmental, private nonprofit and commercial
26 recreation forms of the recreation field and includes parks, conservation,
27 recreation travel, the use of natural resources, wilderness and high density
28 recreation types and the variety of recreation interests in areas and programs
29 which are incorporated in this range."

30 Sec. 8. G.S. 143-323(c) is repealed.

31 Sec. 9. G.S. 143B-279(10) is repealed.

32 Sec. 10. G.S. 143B-280 reads as rewritten:

33 "§ 143B-280. Board of Natural Resources and Community Development;
34 duties; members; selection; meetings; quorum; compensation; services.--The
35 Board of Natural Resources and Community Development shall consider and

1 advise the Secretary of Natural Resources and Community Development upon
2 any matter that the Secretary may refer to it. The Board shall assist the
3 Secretary of Natural Resources and Community Development in the
4 development of major programs and recommend priorities for programs within
5 the Department.

6 The Board of Natural Resources and Community Development shall perform
7 such other duties as may be specifically given to it.

8 The Board of Natural Resources and Community Development shall consist
9 of the following 20 members. The chairman of each of the following
10 commissions: the Wildlife Resources Commission, the Environmental
11 Management Commission, the Marine Fisheries Commission, the Coastal
12 Resources Commission and the Soil and Water Conservation Commission; the
13 chairman of each of the following councils: ~~the Community Development~~
14 ~~Council~~, the Forestry Council, the Parks and Recreation Council and the
15 North Carolina Zoological Park Council; ~~40~~ 11 members at large appointed by
16 the Governor to serve at his pleasure; and the Secretary of Natural Resources
17 and Community Development who shall be a member and chairman ex officio.
18 The Board of Natural Resources and Community Development shall meet at
19 least once in each quarter and may hold special meetings at any time and place
20 within the State at the call of its chairman.

21 A majority of the Board shall constitute a quorum for the transaction of
22 business.

23 Members of the Board shall receive per diem and necessary travel expenses
24 in accordance with the provisions of G.S. 138-5.

25 All clerical and other services required by the Board shall be supplied by the
26 Secretary of Natural Resources and Community Development.

27 Sec. 11. Part 11 of G.S. 143B, sections 143B-305 to 143B-307, is
28 repealed.

29 Sec. 12. There shall be established in the Department of
30 Commerce, Housing Division, a toll-free telephone number to provide
31 information on housing assistance to the citizens of the State.

32 Sec. 13. This Act is effective on July 1, 1989.

LEGISLATIVE PROPOSAL V
SECTION BY SECTION ANALYSIS

Section 1 of this bill transfers the Divisions of Community Assistance and Economic Opportunity from the Department of Natural Resources and Community Development to the Department of Commerce. This is accomplished through a Type I transfer which puts all of the duties, powers, and functions of these divisions, along with their personnel, property, records, and funds into the Department of Commerce.

Section 2 directs the Secretary of Commerce to establish a division of housing in which to place the transferred divisions.

Section 3 amends G.S. 143B-431 to give the department the function of assisting counties and communities in the State to achieve orderly development. The statutory authority under which the Community Assistance Division is given the power to engage in local planning assistance, currently found in G.S. 143-323(c), is also incorporated into G.S. 143B-431.

Section 4 adds the Community Assistance Division, the Economic Opportunity Division, and the Community Development Council to the list of divisions in the Department of Commerce found in G.S. 143B-433.

Section 5 transfers the Community Development Council from the Department of Natural Resources and Community Development to the

Department of Commerce by a Type II transfer. This transfer allows the Council to exercise its statutory powers independently of the department while operating under its supervision and direction.

Section 6 brings the statutory sections establishing the Community Development Council, presently found in G.S. 143B-305 through 143B-307, under Article 10, the Department of Commerce.

Section 7 deletes the reference to the Community Development Council from G.S. 143-320.

Section 8 repeals G.S. 143-323(c) which presently gives local planning assistance authority to the Department of Natural Resources and Community Development.

Section 9 deletes the Community Development Council from the list of divisions in the Department of Natural Resources and Community Development found in G.S. 143B-279(10).

Section 10 amends G.S. 143B-280 to remove the chairman of the Community Development Council from the Board of Natural Resources and Community Development. It also increases the number of at large members on that Board from ten to eleven.

Section 11 repeals Part 11 of Article 7 of G.S. 143B to remove the Community Development Council from the Department of Natural Resources and Community Development.

Section 12 requires the Department of Commerce to set up a toll-free telephone number to provide information on housing assistance. The number is to be set up in the Division of Housing.

Section 13 makes the Act effective at the beginning of the 1989 fiscal year.

